

SINGAPORE REPORTS**LEE KENG GUAN & ORS. v.
PUBLIC PROSECUTOR**[C.C.A. (Wee Chong Jin C.J., Chua and Kulasekaram JJ.)
May 26, 1977]

[Singapore — Criminal Appeal No. 7 of 1976]

Constitutional Law — Charges under s. 4 Arms Offences Act, 1973 — Allegation that charges could have been brought under ss. 324 and 511 Penal Code — Argument that s. 4 of the Arms Offences Act, 1973 is ultra vires as being in violation of art. 8(1) of the Malaysian Constitution — Presumption in favour of constitutionality — Policy of legislature considered — Persons to be charged only under s. 4 Arms Offences Act, 1973 — Section not ultra vires the Constitution — Constitution of Malaysia, art. 8(1) — Republic of Singapore Independence Act, 1965.

Criminal Law and Procedure — Use of firearms — Charge under s. 4 Arms Offences Act — Charge not ultra vires the Constitution of Malaysia — Penal Code ss. 321, 324 and 511 — Constitution of Malaysia, art. 8(1).

The first appellant, L., was convicted on 3 charges for having used a firearm with intent to cause injury to 3 persons and had thereby committed offences punishable under section 4 of the Arms Offences Act, 1973 ("the Act"). Both the second appellant, H., and the third appellant, W., were charged and convicted under section 5 of the Act for being accomplices in the robbery committed by L., in which L. had used a firearm with intent to cause injury to 3 persons. This was an appeal by the appellants against their conviction.

It was contended on the appeal that there were two statutory provisions, section 4 of the Act and section 324 of the Penal Code alone or read with section 511 of the Penal Code which can be applied to persons placed in identical circumstances, i.e., persons who are alleged to have "used" or attempted to "use" an arm and thus the Public Prosecutor is given an unfettered discretion or an arbitrary power to choose as against those persons which of the statutory provisions to apply. The contention was that in such a situation, section 4 of the Act which imposes a heavier penalty than section 324 of the Penal Code is *ultra vires* as being in violation of article 8(1) of the Constitution of Malaysia.

Held: (1) it is clear that the policy of the legislature as enacted in the Act is that all persons who unlawfully possess, carry or use arms should be charged and on conviction punished under the Act and therefore there was no discrimination inherent in the Act itself. Section 4 of the Act therefore does not violate the provisions of Article 8(1) of the Constitution of Malaysia;

(2) on the facts, having regard to the different and in many respects conflicting versions presented by the prosecution, L.'s conviction on the third charge ought to be set aside. The appeal in respect of his conviction on the first and the second charge is dismissed; the appeals of the second and third appellants are dismissed.

Case referred to:-

- (1) *Ram Krishna Dalmia v. Justice Tendolkar* A.I.R. 1958 S.C. 538.

CRIMINAL APPEAL.

Datuk David Marshall for the 1st and 3rd appellants.

J.S. Khosa for the 2nd appellant.

Tan Teow Yeow (Deputy Public Prosecutor) for the Public Prosecutor.

Wee Chong Jin C.J.: The appellants at a joint trial in the High Court were convicted of offences under the Arms Offences Act, 1973 and sentenced to death. The first appellant, Lee Keng Guan, was convicted on the following three charges:—

"First Charge

That you Lee Keng Guan on or about October 19, 1974 at

- A** about 10.25 a.m. at the car park, Rose Garden, Amber Road, Singapore, did use an arm, with intent to cause injury to one Tjong Sauw Yoong and you have thereby committed an offence punishable under section 4 of the Arms Offences Act, 1973 (No. 61 of 1973).

Second Charge

That you Lee Keng Guan on or about October 19, 1974 at about 10.26 a.m. at the car park, Rose Garden, Amber Road, Singapore, did use an arm, with intent to cause injury to one Tjong Giok Hua, and you have thereby committed an offence punishable under section 4 of the Arms Offences Act, 1973 (No. 61 of 1973).

Third Charge

That you Lee Keng Guan on or about October 19, 1974 at about 10.30 a.m. at Mountbatten Road, near the junction with Amber Road, Singapore, did use an arm, with intent to cause injury to one Low Meng Hoe and you have thereby committed an offence punishable under section 4 of the Arms Offences Act, 1973 (No. 61 of 1973)."

The second appellant, Ho Joo Huat, was convicted on the following two charges:—

"First Charge

- D** That you Ho Joo Huat on or about October 19, 1974 at about 10.25 a.m. at the car park, Rose Garden, Singapore, were an accomplice in a robbery committed by you, one Lee Keng Guan and one Wong Loke Fatt in which an arm was used by the said Lee Keng Guan with intent to cause injury to one Tjong Sauw Yoong, and that you were present at the scene of the said robbery and may reasonably be presumed to have known that the said Lee Keng Guan was carrying the said arm, and you have thereby committed an offence punishable under section 5 of the Arms Offences Act, 1973 (No. 61 of 1973).

Second Charge

- F** That you Ho Joo Huat on or about October 19, 1974 at about 10.26 a.m. at a car park, Rose Garden, Amber Road, Singapore, were an accomplice in a robbery committed by you, one Lee Keng Guan and one Wong Loke Fatt in which an arm was used by the said Lee Keng Guan with intent to cause injury to one Tjong Giok Hua, and that you were present at the scene of the said robbery and may reasonably be presumed to have known that the said Lee Keng Guan was carrying the said arm, and you have thereby committed an offence punishable under section 5 of the Arms Offences Act, 1973 (No. 61 of 1973)."

The third appellant, Wong Loke Fatt, was convicted on the following two charges:—

"First Charge

- G** That you Wong Loke Fatt on or about October 19, 1974 at about 10.25 a.m. at the car park, Rose Garden, Singapore, were an accomplice in a robbery committed by you, one Lee Keng Guan and one Ho Joo Huat in which an arm was used by the said Lee Keng Guan with intent to cause injury to one Tjong Sauw Yoong, and that you were present at the scene of the said robbery and may reasonably be presumed to have known that the said Lee Keng Guan was carrying the said arm, and you have thereby committed an offence punishable under section 5 of the Arms Offences Act, 1973 (No. 61 of 1973).

Second Charge

- I** That you Wong Loke Fatt on or about October 19, 1974 at about 10.26 a.m. at a car park, Rose Garden, Amber Road, Singapore, were an accomplice in a robbery committed by you, one Lee Keng Guan and one Ho Joo Huat in which an arm was used by the said Lee Keng Guan with intent to cause injury to one Tjong Giok Hua, and that you were present at the scene of the said robbery and may reasonably be presumed to have known that the said Lee Keng Guan was carrying the said arm, and you have thereby committed an offence punishable under section 5 of the Arms Offences Act, 1973 (No. 61 of 1973)."

The relevant provisions of the Arms Offences Act, 1973 read as follows:—

"Section 2. In this Act, unless the context otherwise requires —

'arm' means any firearm... from which any... bullet... can be discharged...;

'use', with its grammatical variations, means —

(a) in relation to a firearm, ... from which any... bullet... can be discharged... — to cause such bullet... to be discharged with intent to cause physical injury to any person;

Section 4. Subject to any exception referred to in Chapter IV of the Penal Code which may be applicable, any person who uses or attempts to use any arm shall on conviction be punished with death.

Section 5. Where any arm is used by any person in committing or in attempting to commit any offence, each of his accomplices in respect of the last mentioned offence present at the scene of such offence who may reasonably be presumed to have known that such person was carrying or had in his possession or under his control such arm, shall, unless he proves that he had taken all reasonable steps to prevent the use of such arm, be guilty of an offence under this Act and shall on conviction be punished with death."

The prosecution evidence can be stated shortly. A male Chinese, Low Meng Hoe, left his flat, which is on the second floor of a block of flats facing Mountbatten Road and Katong Shopping Centre, at around 10.25 a.m. on October 19, 1974. He proceeded to his car which was parked at a car park situated behind this block of flats. As he was about to open the front offside door of his car he saw two strangers approaching him, one from his left and the other from his right. The one approaching him from his left was the first appellant and the one approaching him from his right was the third appellant. The first appellant held him up with a gun telling him not to move. At the same time Low felt someone relieving him of his wallet which contained money and two cheques. At this moment Low saw a third person whom he identified as the second appellant walking towards his car. He was told to open the door of his car and he was pushed into the rear seat. The appellants also entered the car, the second appellant occupying the driver's seat and the first and third appellants occupied the rear seat with Low sandwiched between them.

While this robbery was taking place, Low's wife witnessed it from the rear verandah of their flat. She saw two persons searching Low's shirt pocket and suspecting a robbery she telephoned the police and then returned to the rear verandah from where she saw Low seated in his car between two persons and another person driving Low's car. At that time she saw Low's nephew, Tjong Sauw Yoong, who was staying with them, about to park his own car No. SV 9467. She signalled to Tjong to stop and then she came down to where Tjong had stopped his car and jumped into the rear seat immediately behind the driver's seat and told Tjong to follow Low's car. As Tjong was about to reverse his car, she saw her husband's car approaching them and on seeing this told Tjong to block her husband's car which he did thereby forcing her husband's car to stop. As it stopped, the appellants came out of the car and Low was pushed out.

The first appellant then walked towards Tjong's car, stood in front of it at a distance of 2 or 3 metres, and pointed a gun at Tjong. At that moment the

A second appellant was to the right of the first appellant, Low was to the left of the first appellant, 2 metres away from him, and the third appellant was beside Low holding the left rear waist band of Low's trousers. The first appellant then opened fire and after firing he ran to the nearside of Tjong's car, pointed his gun at Low's wife, who was still seated immediately behind the driver's seat, and fired. At this point of time the third appellant was standing directly in front of Tjong's car and the second appellant was also in front of Tjong's car but more to the nearside of the car. Low was then standing next to the third appellant.

After the first appellant had fired the second shot, all the three appellants ran away towards the direction of Amber Road. The second appellant was running ahead of the other two with Low chasing them. Neither Tjong nor Low's wife were injured by the two shots fired by the first appellant. The three appellants on reaching the junction of Amber Road and Mountbatten Road, with Low still chasing them shouting in Chinese "robbery, robbery", turned left into Mountbatten Road and continued running on the left hand side of Mountbatten Road in the direction of Tanjong Katong Road.

Then Low saw the first appellant stop, turn around and aim the gun at him whereupon he hid behind a parked car and in that position he heard a sound like a gunshot sound. Another prosecution witness, one Hari Singh, a policeman who on seeing Low chasing two men had stopped his car and gone up to Low, said that one of the two men Low was chasing turned round towards them and opened fire from a gun. Hari Singh's wife was with her husband in the car. She said that Low and her husband were taking shelter behind her car when the shot was fired. Eventually all the appellants were apprehended not far from the scene of the robbery.

After their arrests the second and third appellants made cautioned statements to a police inspector. The second appellant's statement was as follows: —

"I did it. Ah Ong, he was the one who had the gun, asked me to do it. Khok Kia also followed. Ah Ong told us he got a gun. He showed me the gun. We sat in a taxi. Please be lenient. This is the first time. They asked me to drive the car. That is all I have to say."

The third appellant's statement was as follows: —

"I am guilty. Ong, he is the one who was holding the gun, suggested we commit the robbery. Today we met at Geylang, Lorong 41. Ong asked me and Ah Huat to commit the robbery. We went in a taxi. I was told by Ong that he had a gun. He showed me his gun. Can you be lenient with me. I have a daughter. This is all I have to say."

At the close of the case for the prosecution the trial judges amended the third charge against the first appellant by deleting Hari Singh as one of the persons against whom the first appellant intended to cause injury by the use of a gun. The appellants were called upon to enter upon their defence and they elected to give evidence on oath. They called no witnesses to give evidence on their behalf.

They all admitted their purpose was to rob Low and the second and third appellants also admitted they knew the first appellant was armed with a gun. They

also admitted robbing Low and then driving off with Low in Low's car and being blocked by another car. The first appellant in his evidence described the subsequent events as follows:—

"I got down from our car and went to the offside of the other car blocking our car. I took out my gun and pointed it upwards. I scolded the driver of the other car... and asked him to get off. I then fired a shot upwards like this—45°... I fired at 45° upwards—my purpose was to scare the driver off so that our path would not be blocked. After firing the first shot I realised that the driver had no intention whatsoever to drive away his car. I then turned around and told second and third (appellants) to run away. After I had run 20 to 30 yards I turned around and saw the second (appellant) was apprehended by Low Meng Hoe. He was apprehended outside the car... Again I took out my gun and fired 45° in the direction of them. I fired at the mid-portion of the car that was blocking our way. My purpose was to scare Low Meng Hoe so that he would not apprehend the second (appellant)... I did not fire at the lady sitting in the car blocking our path..."

The second appellant in his evidence described the subsequent events as follows:—

"I was the driver... I stopped my car. I was then in a daze and remained in the car. I heard a bang. Don't know what caused it... After I heard the bang I opened the car door and got down. After getting out I saw Low Meng Hoe standing on the offside of his car. When Low saw me getting out... he apprehended me. I then heard another bang. I put up a struggle... I ran away in the direction of Amber Road. I did not know who fired the two shots. I knew first (appellant) had a gun..."

The third appellant in his evidence described the subsequent events as follows:—

"As our car stopped, I saw the first (appellant) got down from the car. Then I heard a gun shot. Then Low got out followed by me. Then first (appellant) started to run away. I started to run. While running I heard a second shot. I was at Rose Garden gate at Amber Road when I heard the second shot. Don't know where the two shots came from. Was still inside the car when I heard the first shot..."

The trial judges found Low and his wife to be truthful witnesses and accepted their evidence. On the first charge against the first appellant they found that the first appellant, when the getaway car was blocked by Tjong Sauw Yoong's car, rushed out of the getaway car, stood in front of Tjong Sauw Yoong's car, pointed his gun at Tjong Sauw Yoong saying "Are you looking for death?" and then fired his gun with the intention of causing physical injury to Tjong Sauw Yoong. On the second charge against the first appellant the trial judges found that the first appellant, on finding that Tjong Sauw Yoong had not been hit, rushed to the nearside of Tjong's car and aiming his gun at Low's wife, shot at her with the intention of causing her physical injury. On the third charge against the first appellant the trial judges found that while being chased by Low at Mountbatten Road the first appellant turned around and fired a shot at Low with the intention of causing physical injury to Low.

On the two charges against the second and third appellants the trial judges found that they were accomplices of the first appellant in the commission of the robbery, that they were present at the scene of the robbery, that they knew the first appellant was carrying a gun, that they saw the first appellant open fire at Tjong Sauw Yoong and at Mrs. Low and that they took no steps at all "to prevent the use of the gun" by the first appellant.

A The appellants now appeal against their convictions. The first appellant, who was convicted of offences punishable under section 4 of the Arms Offences Act, 1973 (hereinafter referred to as "the Act") contends that section 4 is *ultra vires* his constitutional right to equal protection of the law as provided by Article 8(1) of the Constitution of Malaysia which, by virtue of the Republic of Singapore Independence Act, 1965, is law in Singapore. Article 8(1) reads thus — "All persons are equal before the law and entitled to the equal protection of the law." The contention is as follows:—

(1) Section 4 of the Act provides that "any person who uses or attempts to use any arm shall on conviction be punished with death". The Act defines "use" to mean, *inter alia*, to cause a bullet to be discharged "with intent to cause physical injury to any person". There is, however, another statutory provision under which a person who discharges a bullet with intent to cause physical injury to another can be charged and punished on conviction. This other statutory provision is section 324 of the Penal Code, if physical injury is caused; or, if no physical injury is caused, section 324 read with section 511 of the Penal Code. Section 324 of the Penal Code provides that "whoever voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or ... shall be punished with imprisonment ... or with fine, ..." and section 511 of the Penal Code provides that "whoever attempts to commit an offence punishable by this Code with imprisonment or fine ... and in such attempt does any act towards the commission of the offence shall ... be punished with such punishment as is provided for the offence". By section 321 of the Penal Code a person "voluntarily causes hurt" if he does any act with the intention of thereby causing hurt to any person.

(2) There are, therefore, two statutory provisions, section 4 of the Act and section 324 alone or read with section 511 of the Penal Code, which can be applied to persons placed in identical circumstances i.e. persons who are alleged to have "used" or attempted to "use" an arm and thus the Public Prosecutor is given an unfettered discretion or an arbitrary power to pick and choose as against those persons which of the two statutory provisions to apply. In such a situation, section 4 of the Act which imposes a heavier penalty than section 324 of the Penal Code, is *ultra vires* as being in violation of Article 8(1) of the Constitution.

H In support of this contention many decisions of the Supreme Court of India on the meaning, scope and effect of a similar Article in the Constitution of India were cited. However, having regard to the question before us we need refer to only one Indian authority, namely *Ram Krishna Dalmia v. Justice Tendolkar*.⁽¹⁾ The judgment of the Supreme Court was delivered by S.R. Das C.J. and the relevant passages are:— (see page 547 *et seq.*)

"The decisions of this court further establish —

(a) ...

(b) that there is always a presumption in favour of the constitutionality of an enactment and this burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;

- (c) that it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds; A
- (d) ...
- (e) that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of the time and may assume every state of facts which can be conceived existing at the time of legislation; B
- (f) that while good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporation to hostile or discriminating legislation." C

We accept the principles contained in these passages and we now proceed to consider whether, in the light of these principles, section 4 of the Act ought to be struck down as violating Article 8(1) of the Constitution because it enables the Executive to arbitrarily discriminate between persons similarly situated. The first enactment relating exclusively to the carrying and use of arms was Ordinance No. 37 of 1947 intitled "the Arms Offences Ordinance, 1947" under the long title "An Ordinance to amend the law relating to the carrying and using of Arms". Section 4 of the Arms Offences Ordinance, 1947 provided as follows:—

- "4. Any person who makes or attempts to make any use whatsoever of a serviceable arm—
- (a) for the purpose of committing any offence specified in the Schedule to this Ordinance, or
- (b) ... shall, on conviction, be punished with death or with penal servitude for life."

In 1951 the 1947 Ordinance was amended and defined for the first time the word "use" and its grammatical variations to mean—

- "(a) in relation to a firearm, air-gun, air-pistol, automatic gun, automatic pistol and any other kind of gun or pistol from which any shot, bullet or other missile can be discharged or noxious fluid, flame or fumes can be emitted to cause such shot, bullet or other missile to be discharged or such noxious fluid, flame or fumes to be emitted with intent to cause physical injury to any person; and
- (b) in relation to a bomb or grenade, to throw the same, or to cause the same to explode, with intent to cause physical injury to any person or property."

The punishment section, section 4, was left unaltered. The Arms Offences Ordinance, 1947 as amended appears in Chapter 94 of Volume 3 of the 1970 Revised Edition of the Statutes of the Republic of Singapore. H

It is to be observed that until September 16, 1963 when Singapore became a state in the federation of Malaysia Article 8(1) was not in force as law in Singapore. Until September 16, 1963 there was no such constitutional provision in Singapore. It would appear, therefore, that until September 16, 1963 there can be no doubt that section 4 of the Arms Offences Ordinance, 1947 was valid law. I

In 1973 Parliament enacted the present Act as the Arms Offences Act, 1973 under the long title "An

Act to consolidate and amend the law relating to the unlawful possession of arms and ammunition and the carrying and using of arms, and to repeal the Arms Offences Act (Chapter 94) and the Firearms and Ammunition (Unlawful Possession) Act (Chapter 100) of the Revised Edition". Section 4 of the Act prescribes the mandatory death sentence on conviction for using or attempting to use an arm. Its provisions read as follows:—

"4. Subject to any exception referred to in Chapter IV of the Penal Code which may be applicable, any person who uses or attempts to use any arm shall on conviction be punished with death."

The Act repeats the definition of the word "use" contained in the 1951 amendment of the Arms Offences Ordinance, 1947.

In our opinion, because of the history and prevailing circumstances from time to time which are matters of common knowledge and common report, successive legislatures from 1947 have felt the need and have enacted legislation to deal exclusively with the unlawful possession, carrying and use of arms and to prescribe the appropriate punishment for these crimes.

Applying the principles, which we adopt and have earlier set out, laid down by the Supreme Court of India we are of the opinion that the presumption that section 4 of the Act is constitutional has not been rebutted merely by drawing our attention to a provision in the Penal Code (enacted over a century ago and was, according to its long title, a codifying enactment "to consolidate the law relating to criminal offences") under which a person who "uses" or attempts to "use" an arm can also be charged and on conviction be liable to less severe punishment than if charged under section 4 of the Act.

In our judgment, it is clear that the policy of the legislature as enacted in the Arms Offences Act, 1973 is that all persons who unlawfully possess, carry or use arms should be charged and on conviction punished under the Act and therefore there is no discrimination inherent in the Act itself. In our judgment section 4 of the Act does not violate the provisions of Article 8(1) of the Constitution. G

Apart from the constitutional point, it is contended on behalf of the first appellant that he was wrongly convicted on all the three charges. As regards the first charge the submission is that the trial judges had failed to take into consideration the evidence that this appellant is an experienced marksman with rifles. It is submitted that the trial judges ought to have rejected Low Meng Hoe's evidence that the first appellant was pointing the gun at Tjong Sauw Yoong when he opened fire and should have accepted the first appellant's evidence that he fired the gun at an angle of 45° upwards in order to scare Tjong Sauw Yoong. The argument is that the first appellant, an experienced marksman with rifles, could not have missed hitting Tjong Sauw Yoong's car had he been firing at Tjong Sauw Yoong with the revolver he was using.

It is to be observed that the same argument was advanced and considered by the trial judges at the

trial. The trial judges rejected the argument and accepted the evidence of Low Meng Hoe and his wife that the gun was pointed at Tjong Sauw Yoong when it was fired. On that finding of fact the trial judges were entitled to come to the conclusion that the first appellant had fired his gun with the intention of causing physical injury to Tjong Sauw Yoong. In our judgment there was ample evidence to support the conviction of the first appellant on the first charge.

As regards the second charge the submission is that the trial judges failed to give adequate consideration to prosecution evidence which was favourable to the defence of the first appellant in particular the evidence of Low Meng Hoe that after firing the first shot the first appellant "ran to the nearside of the white car, stood there and opened fire the second time without aiming at anything". In our opinion this criticism would have some force had counsel who appeared for the first appellant at the trial refrained from cross-examining Low Meng Hoe on this matter. We reproduce the relevant questions and answers:—

"Q. On this occasion, when he went to the nearside, did he aim at anyone when he fired?

A. He was aiming at my wife who was seated at the rear of the car.

Q. Would I be right in saying that when you say —, did did you see him again squeeze the trigger?

A. Yes, I did.

Q. Now, can you tell us, Mr. Low, when the second shot was fired, what angle was the second accused to this car? Was he slightly at an angle in order to get at your wife who was seated in the rear or was he at right angles to the car, if you can recall.

A. I can't say at what angle he was to the car when he aimed at my wife."

In our judgment having regard to these answers elicited from Low Meng Hoe and to the evidence of Low Meng Hoe's wife, that the first appellant, after firing at Tjong Sauw Yoong, ran to the nearside of the car in which she was seated with a gun in his right hand which he moved about as if pointing at her, the trial judges were entitled to come to the conclusion that the first appellant fired his gun with the intention of causing physical injury to Low Meng Hoe's wife.

We now deal with the third charge in which the first appellant is charged with using an arm to cause physical injury to Low Meng Hoe. It is contended that the prosecution evidence in support of this charge was so confusing and contradictory that the conviction on this charge ought to be set aside. We accept this contention. First, it is clear that in his evidence in chief Low Meng Hoe testified that the first appellant aimed the gun at him but did not open fire. In answer to the first question put to him in cross-examination he agreed that from his evidence in chief the first appellant did not open fire at him. Next, later in cross-examination he said he was hiding behind a parked car along Mountbatten Road when he heard a "gunshot" two or three minutes after he had hidden behind the parked car. When he heard this "gunshot" he said Inspector Hari Singh was not with him and it was later on that he met Hari Singh who came up to him in a car while he was about to continue chasing the first appellant.

A Hari Singh, however, said that he was in his car with his wife and saw Low Meng Hoe chasing two persons. He came up to Low Meng Hoe and parked his car, got out of it and soon afterwards heard a gunshot. He saw one of the two persons had turned around facing the direction of Low Meng Hoe and himself and opened fire from a gun. Hari Singh's wife gave yet a third version. She said her husband came alongside Low Meng Hoe, got down from the car and stood at the rear of the car with Low Meng Hoe whilst she remained seated in the car. Then she heard a shot being fired and she panicked and hid at the rear seat. She did not see who fired the shot.

C Then there was a fourth version from a police constable who was driving a staff car along Mountbatten Road when he saw three male Chinese entering Mountbatten Road from Amber Road. He saw another Chinese, Low Meng Hoe, running from Amber Road carrying a stone and shouting for help. He thought the three male Chinese might be involved in some robbery so he started to chase them in his car. When he was about 30 to 40 feet from the last of the three fleeing Chinese, the last of them turned round and stretched out his hand towards his direction and then he heard a gunshot. In cross-examination the police constable said that when he heard the gunshot, his car had passed Low Meng Hoe.

E In our judgment, having regard to the different and in many respects conflicting versions presented by the prosecution in support of the third charge, the first appellant's conviction on the third charge ought to be set aside.

The appeal of the second appellant — Ho Joo Huat.

F The second appellant was convicted on two charges under section 5 of the Arms Offences Act, 1973. The trial judges found that he and the third appellant were accomplices of the first appellant in the robbery committed by them; that he and the third appellant were present at the scene of the robbery; that they knew the first appellant was carrying a gun; that they saw the first appellant open fire at Tjong Sauw Yoong and Low Meng Hoe's wife; that they took no steps at all to prevent the use of the gun by the first appellant and that they gave no evidence as to any steps they took, if any, to prevent the use of the gun by the first appellant.

H His defence at the trial was that when the getaway car was blocked by the other car he was in a daze and remained in the getaway car when he heard a bang the cause of which was unknown to him. After hearing the bang he got out of the car and was apprehended by Low Meng Hoe. He then heard another bang. He did not know who had fired the two shots.

I It is urged on his behalf that as he was already apprehended by Low Meng Hoe he was unable to take any steps to prevent the first appellant firing at Tjong Sauw Yoong and that the second shot was fired so soon after the first shot that he had no time to prevent the second shot being fired. We reject these submissions which are based on evidence which the trial judges did not accept. On the facts as found

by the trial judges the second appellant (and the third appellant) had ample opportunity to try and prevent or persuade the first appellant from using the gun on Tjong Sauw Yoong and Low Meng Hoe's wife. In our judgment the trial judges' finding that they took no steps at all to prevent the use of the gun by the first appellant was clearly open to them on the evidence and accordingly the second appellant was properly convicted on both charges.

The appeal of the third appellant — Wong Loke Fatt.

The third appellant was also convicted on two charges under section 5 of the Arms Offences Act, 1973. It is contended on his behalf that on the evidence the first appellant did not use his gun in committing the offence of robbery which was committed by the three appellants and that on the evidence the first appellant fired at Tjong Sauw Yoong and at Low Meng Hoe's wife after the commission of the robbery.

It was not in dispute at the trial that the appellants took from Low Meng Hoe his wallet containing cash in circumstances which amounted to the offence of theft as defined in section 378 of the Penal Code. The offence of robbery is defined in section 390 of the Penal Code as follows:—

"390.(2) Theft is 'robbery' if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property, obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death, or hurt, or wrongful restraint, or fear of instant death, or of instant hurt, or of instant wrongful restraint."

In our opinion the prosecution evidence established that the shots were fired at Tjong Sauw Yoong and Low Meng Hoe's wife in order that these two persons would desist from preventing the appellants from "carrying away property obtained by the theft". It follows, in our judgment, that the first appellant "used" his gun in committing the offence of robbery and the third appellant was therefore properly convicted on both charges.

Accordingly, the appeal of the first appellant in respect of his conviction on the first charge and the second charge is dismissed and his appeal in respect of his conviction on the third charge is allowed. The appeals of the second and third appellants are dismissed.

Order accordingly.

Solicitors: *David Marshall; J.S. Khosa & Co.*

MANILAL & SONS (PTE) LIMITED v. COLLECTOR OF LAND REVENUE

[Appeals Board (Choor Singh J. (Commissioner of Appeals))
May 3, 1977]

[Singapore — Appeal No. A.B. 55 of 1973]

Land Acquisition — Acquisition of warehouse property — Valuation by Collector — Appeal against sum awarded — Land Acquisition Act (Cap. 272), s. 27(3).

This is an appeal against the award of \$214,700 by the Collector of Land Revenue for the acquisition by the government of 22 Trafalgar Street, Singapore, on which stands an old warehouse. The property is within the "warehouse" zone in the 1966 Master Plan. The Collector's award reflects a value of \$37 per sq. ft. The appellants contend that the property was worth \$406,140 or \$70 per sq. ft. The date of acquisition was March 23, 1973. The Collector held his inquiry on June 8, 1973. The award was based on the valuation report and recommendations made on October 19, 1973. No regard, however, was taken of the sale of 410 Havelock Road at \$73.76 per sq. ft. on May 11, 1973.

Held: (1) appeals to the Appeals Board under the Land Acquisition Act are by way of rehearing and the Board has full power to receive evidence including evidence by oral examination before the Board. The parties to the appeal are entitled to put before the Board any fresh evidence that may have come to light after the date of acquisition and which will assist the Board in determining the compensation to be paid to the landowner;

(2) it is therefore erroneous to suggest that the Board cannot consider any sale which took place after the date of acquisition;

(3) the market value of the subject property at the date of acquisition was \$60 per sq. ft. and the award should be increased from \$214,700 to \$348,120.

APPEALS BOARD (Land Acquisition).

Sachi Saurajen for the appellants.

P. Selvadurai for the respondent.

Choor Singh J. (Commissioner of Appeals): This is an appeal against the award of \$214,700 by the Collector of Land Revenue for the acquisition by Government of Lot 1685 of T.S. 23 containing an area of 5,802 sq. ft. on which stands an old warehouse.

The property is known as 22 Trafalgar Street, Singapore, and is approximately 150 meters from the junction of Keppel Road, Anson Road and Trafalgar Street. It is a single storey brick wall tile roofed warehouse with a height of 17 feet to the eaves of the roof. It is solidly built and is an intermediate unit in a row of some ten other similar warehouses. There is a back lane at the back of these warehouses and beyond the back lane is a large monsoon drain. At some time in the past, the subject property had a back door opening on to this back lane but it has been bricked up and there is now no access to or from the back lane. Furthermore the back lane is now occupied by a number of squatters and unless and until they are cleared, it cannot be used for vehicular traffic. The subject property is owner occupied.

The relevant date for the purpose of ascertaining the amount of compensation to be paid to the owners of the property is March 22, 1973 for that is the date of the *Government Gazette* in which was published the requisite notification for the acquisition of this property. The property is within the "warehouse" zone in the 1966 Master Plan. The existing use of the land at the material date was also for warehousing purposes.